

**VOLUNTARY CLEANUP CONTRACT  
08-5795-NRP**

**IN THE MATTER OF  
MILLIKEN & CO./GAFFNEY MANUFACTURING CO.  
and  
CHEROKEE COUNTY**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and Cherokee County with respect to the Property located at 110 Railroad Avenue, Gaffney, South Carolina. This contract is written pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. § 44-56-710, et seq. (2002 and Supp. 2007), as amended on June 11, 2008, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C §§ 9601, et seq., and the South Carolina Hazardous Waste Management Act (HWMA), S.C. Code Ann. § 44-56-200 (2002). The Property is identified by Tax Map Serial Number 0990700241000 and includes approximately 16.88 acres. The Property is bounded generally by Railroad Avenue to the north, Walnut Street to the east, Elm, Birch and Cherry Streets to the south, and East Robinson and Concorde Avenue to the west. In entering this Contract, the Department relies on the representations of the "Information and Certification" of October 22, 2008 by Cherokee County, which is incorporated into this Contract and attached as Appendix A.

1. Unless otherwise expressly provided, terms used in this Contract shall have the meaning assigned to them in CERCLA, including any amendments, or in the regulations promulgated thereunder.
  - A. "Cherokee " shall mean Cherokee County.
  - B. "Cherokee's Beneficiaries" shall mean Cherokee County, its Non-Responsible Party lenders, parents, subsidiaries, assigns and successors, including new purchasers, lessees, heirs, and beneficiaries but only to the

extent that such parties have never been a Responsible Party at the Property.

- C. "Bona Fide Prospective Purchaser" shall have the same meaning as that in CERCLA, Section 101(40).
- D. "Contamination" means presence of a Pollutant or Contaminant; or Petroleum, or Petroleum Product; or Hazardous Substance.
- E. "Contract" shall mean this Voluntary Cleanup Contract.
- F. "Department" shall mean the South Carolina Department of Health and Environmental Control or a successor agency of the State of South Carolina that has responsibility for and jurisdiction over the subject matter of this Contract.
- G. "Existing Contamination" shall mean any contamination, including pollutants or contaminants, petroleum or petroleum products, or hazardous substances, present or existing on or under the Site as of the execution date of this Contract.
- H. "Hazardous Substance" means
  - a. Any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act [33 U.S.C. 1321(b)(2)(A)],
  - b. Any element, compound, mixture, solution, or substance designated pursuant to section 9602 of CERCLA,
  - c. Any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act 42 U.S.C. 6921 (but not including any waste the regulation of which under the Solid

Waste Disposal Act 42 U.S.C. 6901 et seq. has been suspended by Act of Congress),

- d. Any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act [33 U.S.C. 1317(a)],
  - e. Any hazardous air pollutant listed under section 112 of the Clean Air Act 42 U.S.C. 7412, and,
  - f. Any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act 15 U.S.C. 2606. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).
- I. "Non-Responsible Party" (or "NRP") shall mean any party which is neither:
- a. A responsible party at the time the voluntary cleanup contract is signed, including lenders, economic development agencies, fiduciaries, trustees, executors, administrators, custodians, subsequent holders of a security interest; nor
  - b. A parent, subsidiary of, or successor to a responsible party.
- J. "Oversight Costs" shall mean those costs, both direct and indirect, incurred by the Department in implementing the Voluntary Cleanup Program as related to this Contract and any future amendments thereto.
- K. "Petroleum" and petroleum product" means crude oil or any fraction of crude oil which is liquid at standard conditions of temperature and pressure (60

degrees Fahrenheit and 14.7 pounds for each square inch absolute), including any liquid which consists of a blend of petroleum and alcohol and which is intended for use as a motor fuel.

- L. "Pollutant or Contaminant" includes, but is not limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction, or physical deformations, in organisms or their offspring; "contaminant" does not include petroleum, including crude oil or any fraction of crude oil, which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of paragraph (14) of CERCLA, Section 101, 42 U.S.C. Section 9601, et seq. and does not include natural gas, liquefied natural gas, or synthetic gas of pipeline quality or mixtures of natural gas and such synthetic gas.
- M. "Property" shall mean property as described in the Information and Certification attached as Appendix A, and that is subject to ownership, prospective ownership, or possessory or contractual interest of Cherokee.
- N. "Response Action" shall mean any assessment, cleanup, inspection, or closure of a site as necessary to remedy actual or potential damage to public health, public welfare, or the environment.
- O. "Responsible Party" shall mean:

- a. The owner and operator of a vessel or a facility, as these terms are defined in CERCLA;
  - b. Any person who, at the time of disposal of any hazardous substance, owned or operated any facility at which such hazardous substances were disposed of, as these terms are defined in CERCLA;
  - c. Any person who, by contract, settlement, or otherwise, arranged for disposal or treatment or arranged with a transporter for transport for disposal or treatment of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by such a party or entity and containing such hazardous substances, as these terms are defined in CERCLA;
  - d. Any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance, as such terms are defined in CERCLA; and
  - e. Any person who owns or operates or who owned or operated an above ground or underground storage tank from which petroleum or petroleum products have been released or who owns and operates or who owned or operated a property on which a petroleum release or other discharge has occurred; however, the exemptions of Section 44-2-80(B) and (C) apply.
- P. "The Site" shall mean all areas where a contaminant, petroleum or petroleum product has been released, deposited, stored, disposed of, placed, or otherwise comes to be located; "Site" does not include any consumer product in consumer use or any vessel, as defined in CERCLA Section 101 (28).

- Q. "Underground Storage Tank" means any one or combination of tanks, including underground pipes connected to it, which is used to contain an accumulation of regulated substance, and the volume of which is ten percent or more beneath the surface of the ground.
- R. "Voluntary Cleanup" shall mean a response action taken under and in compliance with the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. § 44-56-710, et seq. (2002 and Supp. 2007), as amended on June 11, 2008.
- S. "Work Plan" shall mean the plan for additional response actions to be conducted at the Property as described in Paragraph 5 of this Contract.
2. Based on the information known by and/or provided to the Department, the following findings are asserted for purposes of this Contract:
- A. Owners and operators on the Property are as follows:
- |  |                           |
|--|---------------------------|
| Milliken & Co. f.k.a.<br>Gaffney Manufacturing Company | 1892-to March 14, 2008    |
| Pacolet Milliken Enterprises, Inc                      | March 14, 2008 to present |
- B. Available information shows the Property was partially developed as a textile mill before 1894. Sanborn Fire Company maps from 1894 show one mill building predominately used for cotton spinning and weaving operations. The maps do show a small "roller house", which typically is suggestive that some metal plating operations may have been employed; however, insufficient landmarks are shown on the map to allow extrapolation of the roller house to its current location on the Property.

- C. By 1904, the mill had expanded to three large mill buildings, several auxiliary buildings, cotton warehouses and at least two power-generating facilities. The mill supplied electricity to itself and the surrounding mill village using coal as its power source.
- D. The 1918 Sanborn Fire Company maps show that the northernmost building, Mill #3, had a "printing" operation on the first floor (probably an operation that used dyes and finishes). Other operations shown on the map that are historically suspect as sources of persistent contamination in similar mill operations include transformers, machine shops, a "waste house", engine rooms, and coal dust bins. Subsequent editions of the Sanborn maps (1926 through 1957) show some of these operations still in existence; however, several were moved around to new locations within the mill buildings in the subsequent years.
- E. The 1926 Sanborn maps show a reservoir had been constructed downhill from the mill building to supply water for fire-fighting activities. The reservoir was reportedly filled from a well but also received wastewaters from the mill operations.
- F. At least two large ASTs (Above-ground storage tanks) and one UST (Underground Storage tank) used for petroleum storage have been located on the property. The ASTs contained fuel oil for the boilers in the latter years of the mill's operation. It is uncertain from available information if other ASTs or USTs were ever on the Property.
- G. The mill ceased operations in June 2000. Milliken and Co. began demolition activities in 2004. The Property is mostly cleared, with the only remaining intact structure being a small building used as the guard house between the

employee parking lot and the mill. Several concrete slabs and portions of retaining walls are located throughout the Property where mill buildings, warehouses, substations, and cooling towers were previously located. During demolition, the reservoir and a few other unspecified areas on the Property were reportedly filled with building debris and other unknown materials.

- H. Phase I and Phase II Environmental Assessments reports (ARM Environmental Services, Inc., Sep. 2, 2008 and Oct. 2, 2008 respectively) were submitted with Cherokee's Information and Certification. A limited number of borings to collect soil and groundwater were completed during the Phase II assessment. One boring in the location of the former reservoir encountered fill debris from the ground surface to the groundwater depth of 12 feet. The underlying soil collected just above the groundwater contained several PAHs (Poly Aromatic Hydrocarbons) at elevated concentrations. A groundwater sample collected from the boring contained Arsenic and PAHs at concentrations higher than drinking water MCLs (Maximum Contaminant Levels) or PRGs (Preliminary Remediation Goals) for Tapwater. ARM Environmental has suggested the results were due to turbidity of the sample. Other groundwater samples collected from the vicinity where a UST had been removed contained concentrations of Benzene and Toluene above their respective MCLs.
- I. Cherokee intends to acquire the Property to construct a county administration building and parking lots. Cherokee will also transfer at least three acres to the City of Gaffney for construction of a park and green space with walking trails. The transferred property will be located along the southern boundary of the Property and will include the area of the filled-in former reservoir.



3. Cherokee is a South Carolina county government with its principal place of business located at 210 North Limestone Street, Gaffney, SC. Cherokee is a Non-Responsible Party at the Site; it is not a parent, successor, or subsidiary of a Responsible Party at the Site; and it certifies that it is eligible to be a Bona Fide Prospective Purchaser for the Property. Cherokee had no previous involvement with the Site, including but not limited to any such activities that may have resulted in any Existing Contamination at the Site.
4. Cherokee agrees to submit to the Department for review and written approval within thirty (30) days of the execution date of this Contract a Work Plan for the Property that is consistent with the technical intent of the National Contingency Plan. The Work Plan shall be implemented upon written approval from the Department. The Work Plan shall include the names, addresses, and telephone numbers of the consulting firm, the analytical laboratory certified by the Department, and Cherokee County Council's contact person for matters relating to this Contract. Cherokee will notify the Department in writing of changes in the contractor or laboratory. The Department will review the Work Plan and will notify Cherokee in writing of any deficiencies in the Work Plan, and Cherokee shall respond in writing within thirty (30) days to the Department's comments. The Work Plan and all associated reports shall be prepared in accordance with industry standards and endorsed by a Professional Engineer (P.E.) and/or Professional Geologist (P.G.) duly-licensed in South Carolina and shall set forth methods and schedules for accomplishing the following tasks:
  - A. Remove any existing sources of contamination:
    - a. In the event that drums, tanks, or other containers and items that are potential sources of contamination are found on the Property at any time during assessment or development activities, all shall be characterized

and removed from the Property for proper use or disposal in accordance with applicable regulations. Records documenting characterization and disposal of these items shall be provided to the Department within 30 days of removal.

- b. Should any release of contamination occur or be identified during removal of these items, Cherokee shall immediately notify the Department and shall assess the impact of the release in accordance with a Department approved plan.

B. Conduct a well survey:

- a. All public and private wells used for drinking purposes within a one-half mile radius of the Property, and any well used for irrigation or other non-drinking water use within a one-quarter mile radius, shall be mapped and reported to the Department.
- b. Information provided to the Department shall be sufficient to allow the Department to secure permission to sample the well, if deemed necessary. At a minimum, this shall include the 1) Location of the well, 2) Identity and mailing address of the well owner, and, 3) Phone number of the well owner or occupant of the residence served by the well, if publicly available or otherwise known to Cherokee.

C. Assess soil contamination:

- a. Cherokee shall collect a minimum of six (6) surface soil samples (0-1 feet deep) outside of the footprint of mill buildings, paved areas and warehouses. The samples shall be roughly distributed equally around the Property exclusive of the footprint.
  - i. Surface soil samples collected outside of the footprints shall be analyzed for all EPA TAL (Target Analyte List) metals, and for all TCL

(Target Compound List) SVOCs (Semi-Volatile Organic Compounds) with the exception of Pesticides and Herbicides.

- b. Cherokee shall collect a minimum of nineteen (19) soil samples distributed within the footprint of the mill buildings, exclusive of the footprint of the cotton storage warehouses east of the railroad spur, and one (1) sample adjacent to the wastewater structure (near the northwest corner of the Mill #1 slab). A minimum of seven (7) of the "footprint" samples shall target specific areas likely to have contained sources of contamination.
  - i. The "targeted" sample areas shall be determined based on review of the Sanborn Fire Company maps in consultation with the Department's project manager. Non-targeted soil samples shall be equally distributed within the remaining area of building footprints.
  - ii. Samples in areas covered by concrete slabs shall be collected immediately underlying the slab. Samples in the footprint of Mill #3, where the slab has been removed, shall be collected from a depth of 0-1 foot below ground surface.
  - iii. The sample adjacent to the wastewater structure shall be on the downgradient side of the structure from a depth of 5-6 below ground surface.
  - iv. All soil samples from within the building footprints and adjacent to wastewater structure shall be analyzed for TAL metals, VOCs (TCL Volatile Organic Compounds) and SVOCs and PCBs. One sample shall also be analyzed for all TCL Pesticides and Herbicides. All analytical methods shall use appropriate detection levels to allow comparison to the criteria specified below.
- c. The soil results shall be compared to both the "Residential and Industrial Soil Screening Level" and the applicable "Protection of Groundwater

MCL-based SSL" as listed in the current "EPA Regional Screening Levels for Chemical Contaminants at Superfund Sites".

D. Assess groundwater quality:

- a. Cherokee shall determine the groundwater quality and the probable groundwater flow direction. This assessment shall include samples from a minimum of six monitoring wells to be installed as well pairs in three locations. The well pairs shall consist of a well screened to bracket the water table, and a well screened at the bedrock-saprolite interface.
  - i. In the event that groundwater is not encountered above the bedrock, the shallower wells may be omitted after consultation with the Department.
  - ii. The monitoring wells shall be permitted and constructed in accordance with the South Carolina Well Standards and Regulations-R.61-71.
  - iii. The Wells may be installed as temporary wells or direct-push micro wells, provided non-turbid samples can be collected.
- b. Specific locations of the wells shall be as follows:
  - i. One well pair shall be installed near the Property's southeast corner in the presumed downgradient flow direction from the former reservoir.
  - ii. One well pair shall be installed near the east Property boundary in a presumed downgradient flow direction from a major portion of the mill operations.
  - iii. One well pair shall be installed near Mill #3's southeast corner in a presumed downgradient flow direction from printing and machine shop activities identified on the Sanborn maps.
- c. All groundwater samples shall be analyzed for the TAL metals, and TCL VOCs, SVOCs and PCBs. One sample shall also be analyzed for all TCL

Pesticides and Herbicides. All analytical methods shall use appropriate detection levels to allow comparison to the criteria specified below.

- d. Groundwater quality results shall be compared to standards set forth in the South Carolina State Primary Drinking Water Regulations R.61-58, if specified, or to the Regional Screening Tables for "Tapwater", if not specified.

E. Assess surface water sediment quality:

- a. Cherokee shall collect a minimum of three (3) stream sediment samples from the stream east of the Property to determine if historical releases have a continuing impact. Cherokee shall determine the point where the sub-surface drain leaving the Property discharges to the stream. One sediment sample shall be collected upstream of the discharge point to serve as a control sample. A minimum of two samples shall be collected downstream of the discharge point.
- b. All stream sediments shall be analyzed for the TAL metals, and TCL VOCs, SVOCs and PCBs.
- c. Sediment sample results from the downstream locations shall be compared to the upstream sediment results, and then to the Ecological Screening Values (EPA Region 4 Ecological Risk Assessment Supplement to RAGS <http://www.epa.gov/region4/waste/ots/ecolbul.htm>).

F. Evaluate and control potential impacts to indoor air:

- a. Cherokee shall collect and analyze gas samples from the proposed footprint of buildings to be constructed on the site in the event that the Department determines significant concentrations of volatile organic compounds are encountered in subsurface soil samples or groundwater samples. The Department will use the modified Johnson and Ettinger Model to determine "Significant concentrations" and the model will be

constrained towards predicting commercial exposures consistent with the building construction likely to be employed on the site. The scope and extent of soil gas testing will be determined based on site-specific conditions after modeling the contaminant distribution, but may include up to one sample per thousand square feet of building footprint.

- b. Soil gas samples shall be analyzed for all site related constituents including volatile organic compounds by appropriate methods capable of detecting soil gas concentrations at screening levels indicative of a  $10^{-6}$  risk for shallow gas samples (using an attenuation factor appropriate for the depth of the samples) as identified in Table 2c of EPA OSWER Draft Guidance for Evaluating the Vapor Intrusion to Indoor Air Pathway from Groundwater and Soils (Subsurface Vapor Intrusion Guidance), <http://www.epa.gov/correctiveaction/eos/vapor.htm>.
- c. An addendum to the Work Plan shall be submitted detailing the steps to be taken if the soil gas evaluation indicates contamination underlying the Property may impact indoor air quality

G. Stop continuing releases of contamination and, as required by the Department, address contamination in a manner that is protective of human health and the environment, consistent with the intended future use of the Property:

- a. Based on the results of the assessment activities above, Cherokee shall take reasonable steps, approved by the Department, to address the presence of contamination:
  - i. In excess of appropriate human-health and ecological risk-based standards via all potential routes of exposure;
  - ii. In excess of appropriate standards for contaminant migration to groundwater; or
  - iii. In the event that evidence of a continuing source of contamination is

identified in the subsurface under the Property. For purposes of this clause, evidence of a continuing source may include finding Non-Aqueous Phase Liquids (NAPL) at concentrations that are presumptive of a source including chemical concentrations:

- (a) At, or greater than 1% of a chemical's solubility limit in any groundwater sample, or,
  - (b) At levels suggestive of a continuing source of environmental contamination based on technical references, empirical modeling, or other technically defensible method used by the Department.
- b. In the event that any result exceeds these screening criteria, additional sample locations and procedures to determine the extent of contamination shall be proposed and implemented under a Department-approved addendum to the Work Plan.
- c. Any action to address a source of continuing release and other activities undertaken at the Property shall be consistent with all laws and permitting requirements of the Department, including, but not limited to, stormwater management and waste disposal regulations. Cherokee shall identify and obtain the applicable permits before initiating any actions.

H. Implement groundwater monitoring and/or abandon permanent monitoring wells:

- a. Based on the results of groundwater assessment, implementation of a Department-approved groundwater monitoring program may be required.
- b. If groundwater monitoring is not required and there are no further needs for any of the groundwater monitoring wells, Cherokee shall abandon the monitoring well(s) in accordance with R.61-71 of the South Carolina Well Standards.

5. Cherokee shall prepare and submit under separate cover from the Work Plan, a Health and Safety Plan that is consistent with Occupational Safety and Health Administration regulations. Cherokee agrees that the Health and Safety plan is submitted for informational purposes only to the Department and the Department expressly disclaims any liability that may result from implementation of the Health and Safety Plan by Cherokee County Council
6. Cherokee shall inform the Department at least five (5) working days in advance of all field activities pursuant to this Contract and shall allow the Department and its authorized representatives, if so desired, to take duplicates of any samples collected by Cherokee pursuant to this Contract.
7. Cherokee shall preserve all drums, bottles, labels, business and operating records, contracts, Site studies, investigations, and other physical or written materials relating to the Site that may provide environmental information, evidence of a Potentially Responsible Party's involvement at the Site, or may lead to the discovery of other areas of contamination at the Site. Prior to destruction of any such items, Cherokee shall notify the Department of their location and provide the Department with an opportunity to inspect any materials or copy any documents at the Department's expense.
8. Within 30 days of Work Plan approval Cherokee shall submit to the Department's project manager a written progress report that must include the following: (a) actions taken under this Contract, (b) actions scheduled to be taken in the future; (c) sampling, test results, and any other data, generated during the assessment activities, whether generated pursuant to this Contract or not; and (d) a description of any environmental problems experienced during the assessment and development activities and the actions taken to resolve them.



9. All correspondence which may be required or permitted to be given by either party to the other hereunder shall be in writing and deemed sufficiently given if delivered by (i) regular U.S. mail, (ii) certified or registered mail, postage prepaid, return receipt requested, (iii) or nationally recognized overnight delivery service company or by hand delivery to the other party at the address shown below or at such place or to such agent as the parties may from time to time designate in writing. All correspondence, four (4) copies of all Work Plans and Reports, and one (1) copy of the Health and Safety Plan should be submitted to:

For the Department:

Konstantine Akhvlediani  
Bureau of Land and Waste Management  
2600 Bull Street  
Columbia, South Carolina 29201

For Cherokee County

Holland Belue  
210 North Limestone Street  
Gaffney, South Carolina, 29340-3136

10. The Department and Cherokee recognize that public participation is an important component of the Voluntary Cleanup Contract. Specific functions of the Department and Cherokee are as follows:
- a. The Department will seek public comment in accordance with S.C. Code Ann. § 44-56-750 (2002 and Supp. 2007), as amended on June 11, 2008, and as outlined below:
    - i. Upon signature of this Contract by Cherokee County, the Department will provide notice for public participation by placing announcements describing the proposed Contract in newspaper(s) of general circulation within the affected community. A thirty-day period

following the publication date of the announcement(s) will be provided for public comment and will precede the Department's scheduled date for execution of the Contract.

- ii. The Department may publicize the proposed Contract by any other means including, but not limited to, electronic mail, news releases, community flyers, and door-to-door canvassing. Such actions may be done solely at the Department's discretion.
  - iii. A public informational meeting will be held if requested by twelve residents of South Carolina or an organization representing twelve or more residents of South Carolina. At the Department's discretion, public informational meetings may be held in the nearby communities for any other reason prior to the Department executing the contract. A public meeting may be requested at any time during the thirty-day comment period. In the event that a public meeting is deemed necessary, the Department will provide approximately two weeks advance notice of the meeting to the public and will extend the public comment period at least through the end of the day following the public meeting. The Department will not execute the contract during any public comment period. In addition, the Department may, at its discretion, conduct public meetings to inform the community about the site at any time after the contract is executed until the certificate of completion is issued.
- b. Cherokee agrees to enhance the public knowledge of the site response activities by:
- i. Erecting a sign(s) at each entrance onto the Property from any public road, thoroughfare, navigable waterway, or other location routinely accessible by the public. The sign(s) shall be erected not later than one day after publication of any public announcement about the site

placed by the Department in any newspaper of general circulation in the community.

- ii. The sign will state "Voluntary Cleanup Project by Cherokee County under Voluntary Cleanup Contract 08-5793-NRP with the South Carolina Department of Health and Environmental Control." The sign shall provide a brief description of the scope of activities under the NRP contract and contact information, including telephone number and address, for a representative of Cherokee County. Contact information for the Department shall state "TOLL-FREE TELEPHONE: 1-866-576-3432". All required lettering on the sign must be of sufficient size to be legible with un-aided normal eyesight from the point where the public will normally pass by the site without intruding onto the Property.
- iii. Within 10 days after erecting the sign, Cherokee shall furnish to the Department photographs of the sign along with a site location drawing showing the sign location(s). Photograph(s) of the sign(s) shall be taken from no closer than the edge of the publicly accessible road or waterway, and should include an appropriately sized scale reference so that Department may determine the size of the sign and effectiveness of the lettering. Cherokee agrees to revise the sign if the Department determines the sign is not legible.
- iv. Cherokee must maintain the sign(s) in legible conditions and visible locations throughout the duration of the contract period until a certificate of completion is issued on the site.
- v. In the event that any sign must be removed to accommodate building or grading activities, Cherokee shall replace the sign within two days. If the sign cannot be restored to the original location, Cherokee may relocate it to another location meeting the conditions specified above.

- c. All costs incurred by the Department for public participation (e.g., public notice(s), building and equipment rental(s) for public meetings, etc.) will be paid by Cherokee County.
- 11. The terms and conditions of this Contract apply to and shall inure to the benefit of the Department and Cherokee Beneficiaries.
- 12. The Department shall be notified in writing upon transfer of ownership of the Property.
- 13. Nothing in this Contract is intended to be, or shall be construed as, a release or covenant not to sue for any claim or cause of action, past or future, that the Department may have against any person, firm, or corporation other than Cherokee Beneficiaries.
- 14. Nothing in this Contract is intended to limit the right of the Department to undertake future response actions at the Site or to seek to compel parties other than Cherokee Beneficiaries to perform or pay for response actions at the Site. Nothing in this Contract shall in any way restrict or limit the nature or scope of response actions that may be taken or be required by the Department in exercising its authority under State and Federal law.
- 15. The Department, its authorized officers, employees, representatives, and all other persons performing response actions will not be denied access to the Property during normal business hours or at any time work under this Contract is being performed or during any environmental emergency or imminent threat situation, as determined by the Department (or as allowed by applicable law). Cherokee and subsequent owners of the Property shall ensure that a copy of this Contract is provided to any lessee successor or other transferee of the Property.

16. As provided for by S.C. Code Ann. § 44-56-200 (2002) and S.C. Code Ann. § 44-56-750 (D) (2002), Cherokee shall, on a quarterly basis, reimburse the Department for oversight costs of activities required under this Contract. In recognition of Cherokee's non-profit status, the Department may waive reimbursement of oversight costs; however, the Department reserves the right to re-instate oversight billing upon notice to Cherokee. Oversight costs include but are not limited to the direct and indirect costs of negotiating the terms of this Contract, reviewing Work Plans and reports, supervising corresponding work, and public participation. Payments will be due within thirty (30) days of receipt of the Department's invoice. Invoices shall be submitted to:

Holland Belue  
Cherokee County  
210 North Limestone Street  
Gaffney, SC 29340-3136

17. Cherokee's Beneficiaries are entitled to protection from contribution claims as provided by CERCLA § 113(f)(2), 42 U.S.C. §§ 9613(f)(2); S.C. Code Ann. § 44-56-200 (2002) and S.C. Code Ann. § 44-56-750 (2002 and Supp. 2007), as amended on June 11, 2008. A thirty (30) day comment period for contribution protection commences upon notice of this Contract to Responsible Parties at the Site as identified by the Department through a reasonable search effort.
18. Cherokee's Beneficiaries are entitled to protection from third-party claims for equitable relief or damages relating to "Existing Contamination" at the Site, as provided by S.C. Code Ann. § 44-56-750 (2002 and Supp. 2007), as amended on June 11, 2008. This limitation on liability does not apply to any contamination, releases, and consequences caused by Cherokee's Beneficiaries. Should

contamination not previously identified as "Existing Contamination", or at levels not previously identified, be discovered at the Site, or upon unforeseen releases or consequences, the burden is on Cherokee's Beneficiaries to demonstrate to the Department's satisfaction that the contamination, release, and/or other consequences were not caused by Cherokee's Beneficiaries. Furthermore, this limitation of liability is effective on the date this contract is executed by the Department, but will be automatically withdrawn if this contract is lawfully terminated by either party.

19. The Department shall prepare and sign a Declaration of Covenants and Restrictions (restrictive covenant) prior to providing it to Cherokee. Cherokee shall enter into and record a restrictive covenant on the Property. At a minimum, the restrictive covenant shall define the area of the former reservoir as a "beneficial fill" subject to restrictions on its excavation and, if left in place, restrictions on maintaining a Department-approved cover. Other restrictions may be imposed on the Property if, after the actions required under this Contract are completed, contamination in excess of unrestricted use (residential standards) remain at the Property. The recorded restrictive covenant shall be incorporated into this contract as an Appendix and shall be subject to the following provisions:
  - A. The restrictive covenant shall be signed by the Department and an authorized representative of Cherokee or subsequent owners working under this Contract and witnessed, signed, and sealed by a notary public. The fully executed restrictive covenant shall be filed with the Register of Mesne Conveyance or Deeds by Cherokee or subsequent owner executing the instrument, a copy of the recorded restrictive covenant shall be provided to the Department showing that date the instrument was filed and showing the book and page number where it has been recorded.
  - B. With the approval of the Department, the restrictive covenant may be modified in the future if additional remedial activities are carried out that

meet appropriate clean up standards at that time or circumstances change such that the restrictive covenant would no longer be applicable.

- C. The Department may require Cherokee or subsequent owners to modify the restrictive covenant if a significant change in law or circumstances requiring remediation occur.
  - D. Cherokee or subsequent owners may commission a survey to delineate a new legal parcel that is subject to the restrictive covenant.
  - E. Cherokee or the single individual or entity responsible for coordinated compliance monitoring shall file an annual report with the Department by May 31st of each year detailing the current land uses and compliance with the restrictive covenants for as long as the restrictive covenant remains in effect on the affected property. The report may be submitted in a manner prescribed by the Department
20. Two (2) years after the execution date of this Contract, Cherokee or subsequent owner of the Property shall provide the Department with the following information concerning the new operation at the Property: the number of jobs created; the amount of increase to the tax base; the amount of soil removed or remediated, if necessary; cost of all environmental work; and any other information that demonstrates that the activities performed pursuant to this Contract have been beneficial to the State, the community, and the Department.
21. Upon successful completion of the terms of this Contract as referenced in Paragraphs 4, 5 and 19 above, Cherokee shall submit to the Department a written notice of completion. As part of this notice, Cherokee shall report the costs of all environmental work and the total amount invested in the site for property acquisition and capital improvements. Once the Department determines satisfactory completion of the Contract terms, the Department, as provided by CERCLA § 113(f)(2), 42 U.S.C. §§ 9613(f)(2); S.C. Code Ann. § 44-56-200 (2002)

and S.C. Code Ann. § 44-56-750 (2002 and Supp. 2007) as amended on June 11, 2008, will give Cherokee a Certificate of Completion that provides a covenant not to sue Cherokee's Beneficiaries, for Existing Contamination, except for releases and consequences caused by Cherokee's Beneficiaries. Should contamination not previously identified as "Existing Contamination", or at levels not previously identified, be discovered at the Site, or upon unforeseen releases or consequences, the burden is on Cherokee's Beneficiaries to demonstrate to the Department's satisfaction that the contamination, release, and/or other consequences were not caused by Cherokee's Beneficiaries. In consideration of the protections from the Department, Cherokee's Beneficiaries agree not to assert any claims or causes of action against the Department arising out of activities undertaken at the Site or to seek other costs, damages, or attorney's fees from the Department arising out of activities undertaken at the Site, except for those claims or causes of action resulting from the Department's intentional or grossly negligent acts or omissions.

22. Cherokee specifically denies any responsibility for response costs or damages resulting from Existing Contamination and does not, by signing this Contract, waive any rights that it may have to assert any claims in law or equity against any other person, company, or entity with respect to the Site. However, Cherokee's Beneficiaries are responsible and liable for any and all contamination, releases, and consequences they cause or contribute to the Site. Should environmental contamination neither previously-identified nor identified during the performance of response actions required under this Contract be discovered at the Site after the execution date of the Certificate of Completion, the burden is on Cherokee's Beneficiaries to demonstrate to the Department's satisfaction that the contamination, releases, and consequences were not caused by Cherokee's Beneficiaries.



23. Cherokee or subsequent owners of the Property and the Department each reserve the right to unilaterally terminate this Contract. Termination may be accomplished by giving a thirty (30) day advance written notice of the election to terminate this Contract to the other party. Should Cherokee or subsequent owners of the Property elect to terminate, it must submit to the Department all data generated pursuant to this Contract, and certify to the Department's satisfaction that any environmental or physical hazard created by Cherokee shall be stabilized and/or mitigated such that the Property does not pose a hazard to human health or the environment that did not exist prior to any initial response action addressing contamination identified in this Contract. Termination of this Contract by Cherokee County Council, any other Property owner, or the Department does not end the obligations of Cherokee to pay oversight costs already incurred by the Department and payment for such costs shall become immediately due.
24. The Department may terminate this Contract only for cause, which may include but is not limited to the following:
- A. Events or circumstances at the Property that are inconsistent with the terms and conditions of this Contract;
  - B. Failure to complete the terms of this Contract or the Work Plan;
  - C. Failure to submit timely payment for oversight costs as defined in Paragraph 16 above;
  - D. Additional contamination or releases or consequences caused by Cherokee's Beneficiaries;
  - E. Providing the Department with false or incomplete information or knowing failure to disclose material information;
  - F. Change in Cherokee's Beneficiaries' business activities on the Property or use of the Property that are inconsistent with the terms and conditions of this Contract.

- G. Failure by Cherokee's Beneficiaries to obtain the applicable permits from the Department for any response actions or other activities undertaken at the Property.
25. Upon termination of the Contract, the covenant not to sue, contribution protection, and liability protection will be null and void. However, if any Cherokee Beneficiary provides false or incomplete information or if its business activities change such that they are inconsistent with the terms and conditions of this Contract, then the covenant not to sue, contribution protection, and liability protection shall become null and void only as to the Cherokee Beneficiaries involved in the action giving rise to the termination without affecting the protections provided by this Contract to the previous Non-Responsible Parties and other Cherokee Beneficiaries.
26. Cherokee, including Cherokee's Beneficiaries, shall not be subject to, bound or obligated in any manner under this Contract in the event Cherokee, and/or Cherokee's Beneficiaries, elects not to purchase the subject property from Milliken & Co./Gaffney Manufacturing Co.
27. The signatories below hereby represent that they are authorized to and do enter into this contract on behalf of their respective parties.

**THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND  
ENVIRONMENTAL CONTROL**

BY: \_\_\_\_\_  
Daphne G. Neel, Chief  
Bureau of Land and Waste  
Management

DATE: \_\_\_\_\_

\_\_\_\_\_  
Approved by Office of General Counsel

DATE: \_\_\_\_\_

**Cherokee County**

BY:  \_\_\_\_\_

DATE: 1/21/09 \_\_\_\_\_

J. Holland Belue, Asst. Administrator  
Printed Name and Title